



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0243]

Hours of Service of Drivers: Application for Exemption; Power and Communication Contractors Association (PCCA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the Power and Communication Contractors Association (PCCA) has requested an exemption from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS) no later than December 18, 2017. PCCA requests the exemption for all operators of a commercial motor vehicle (CMV) in the power and communications construction industry. Construction contractors spend considerable time working off-road on varying jobsites, and a single CMV may have several different drivers over the course of a day, moving the vehicle short distances around the jobsite. Because of the limited time within a workday that their drivers spend driving on public roads, PCCA states that ELD and record of duty status (RODS) requirements for drivers in their industries do not result in a significant safety benefit. PCCA's drivers would remain subject to the standard HOS limits and maintain a paper RODS for HOS compliance. PCCA believes that the exemption, if granted, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved

absent the exemption. FMCSA requests public comment on PCCA's application for exemption.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0243 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m.,

ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0243), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a

mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2017-0243” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety

equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The PCCA represents contractors, manufacturers, and distributors who build and repair America's power and communications infrastructure, including electric transmission, distribution, and substation facilities and broadband, telephone, and cable television systems. PCCA members also engage in directional drilling, local area and premises wiring, and improvements to water and sewer infrastructure, as well as gas and oil pipelines. While PCCA is not aware of a confirmed, finite number of drivers in the power and communication construction industry, they believe there are tens of thousands of them across the U.S. These are construction workers – driving is incidental to their core job function.

PCCA contractors maintain a wide range of different vehicles, including dump trucks, water-related vehicles, skid trucks, and flatbeds used to carry heavy excavation equipment. Buses are also used to transport workers to and from a construction jobsite.

The exemption would apply to drivers in the power and communications construction industry, who operate under significantly different circumstances than interstate truck drivers. CMV operators working on broadband and/or electric

infrastructure projects commonly drive multiple vehicles for short distances within a single day, and a single vehicle is often driven by multiple drivers.

Numerous exemptions to the ELD and RODS requirements are available depending on varying job functions, including for those operating 8 days in 30-day period, short haul 100 air-mile rule, 150 air-mile rule, utility service vehicle (USV) exemption, ready mix trucks, pipeline welders, etc. The complexity of navigating the ELD and RODS requirements and exemptions make compliance difficult, exposing their drivers to unknowing violations. According to PCCA, application of these requirements to their drivers is confusing even for law enforcement officials. When contrasted against the requirements' minimal benefit to the safety of their drivers, application of the ELD and RODS requirements to their construction personnel proves to be quite unnecessary.

Drivers in the power and communication construction industry commonly operate under the USV exemption as defined under § 395.2 of FMCSRs, which exempts drivers of a USV “used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service.” Requiring installation of ELD technology in USVs operated in an industry that is normally exempt from HOS requirements because of the critical nature of its work presents an unnecessary burden.

PCCA’s application requests an exemption from requirements to use ELDs in lieu of written logs to document their RODS under 49 CFR § 395.8(a). The exemption they are requesting would be limited to their drivers: (1) Who are on duty no more than 14

hours per day; (2) Who drive less than 200 miles per day, regardless of start and stop location; and (3) For whom the driving of CMVs is incidental to their core employment.

IV. Method to Ensure an Equivalent or Greater Level of Safety

According to PCCA, exempting power and communication contractors from ELD requirements would not compromise the safety of drivers in the industry in any way. All rules related to the short-haul exemption would still apply, and drivers would continue to comply with written RODS requirements when short-haul limitations are exceeded.

Unlike long-haul interstate truckers, drivers in the construction industry meet a variety of job functions and spend the vast majority of their time on a jobsite within a short distance of their daily assembly point, not on public roads and highways. Power and communication contractors would continue to meet all other HOS requirements overseen by FMCSA.

PCCA believes an equivalent level of safety will be achieved if drivers in the power and communication construction industry are exempt from ELD requirements as described above.

A copy of PCCA's application for exemption is available for review in the docket for this notice.

Issued on: September 8, 2017.

Larry W. Minor,

Associate Administrator for Policy.

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